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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal No.1055 of 2005

Appellant Claimant	Ramesh Kumar, S/o Ramsubhag Aged about 18 years, R/o Maheba, P.S. Basantpur, District Surguja (C.G.)

versus

Respondents	1. The United India Insurance Company Limited, through the Branch Manager, Branch Office, Near Ram Mandir, Ambikapur, District Surguja (C.G.)
	2. Matendra Singh Babra, S/o Harwansh Singh, Aged about 48 years, R/o Deviganj Road, Ambikapur, District Surguja (C.G.)

Memorandum of appeal under Section 173 of the Motor Vehicles Act read with Order 43 Rule 1 (t) of C.P.C.

Present : Shri A. K. Shukla, counsel for the appellant.
Shri Abhishek Sinha, counsel for the respondent No.1/insurance Company.
No one appears on behalf of the respondent No.2.

ORAL ORDER
(Passed on 14th August, 2007)

Heard.

(2) The appellant/claimant is aggrieved by the impugned award dated 16-06-2005 passed by 2nd Additional Motor Accidents Claims Tribunal, Surajpur, District Surguja (henceforth 'the M.A.C.T.') in Motor Accidents Claim Case No.06/2002, whereby an application under Order 9 Rule 9 of C.P.C. filed by the claimant for setting aside the dismissal of claim case on 23-06-2001 in the absence of the claimant, was rejected on the ground that

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dismissal was under Order 17 Rule 3 of C.P.C., and therefore, the appellant was required to prefer an appeal.

(3) Brief undisputed facts are that upon last and final opportunity ~~was~~ being granted to the appellant to adduce evidence, the claim case No.06/2002 was fixed on 23-06-2001 for evidence. The claimant remained absent on 23-06-2001. Upon his prayer for adjournment being turned down the learned counsel for the claimant withdrew, pleading no instructions. Thereafter, the M.A.C.T. dismissed the application in the absence of the claimant.

(4) The sole question which requires consideration in this appeal is which of the provisions contained in Order 17 Rule 3 or under Order 17 Rule 2 C.P.C. shall be applicable.

(5) Order 17 Rule 3 of C.P.C. reads as under:-

> 3. **Court may proceed notwithstanding either party fails to produce evidence, etc.-** Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, [the Court may, notwithstanding such default,-
>
> (a) if the parties are present, proceed to decide the suit forthwith, or,
>
> (b) if the parties are, or any of them, is absent, proceed under rule 2] .

A plain reading of Order 17 Rule 3 of C.P.C. leaves no room for any doubt that sub clause (b) of Rule 3 applies to the present case because the claimant was absent on the date of evidence and the learned counsel for the claimant had pleaded no instruction. Therefore, the dismissal of the claim application was clearly under sub clause (b) of Rule-3 of Order 17 and not under sub clause (a) of Rule 3 of Order 17 of C.P.C. Thus, the dismissal of

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the claim case being under Order 17 Rule 2 C.P.C., the provisions contained in Order 9 C.P.C. were applicable.

(6) The order passed by the M.A.C.T. holding the dismissal of the claim application under Order 17 Rule 3 of C.P.C. is thus contrary to law and liable to be set aside.

(7) In this view of the matter, the appeal is allowed. The impugned order dated 16-06-2005 passed by the M.A.C.T. in Motor Accidents Claim Case No.06/2002 is set aside. The M.A.C.T. shall consider the application under Order 9 Rule 9 of C.P.C. on merits after giving opportunity of hearing to the parties.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Tumane